

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Civil Writ Petition No.204 of 2001

Judgment reserved on: 15.03.2007.

Date of decision: 19.03.2007

Gulab Singh

Petitioner

Versus

Union of India and others.

Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting ?¹ No.

For the Petitioner:

**Mr. Kuldip Singh Kanwar, Senior
Advocate with Mr. Karan Singh
Kanwar, Advocate.**

For the Respondents:

**Mr. Sandeep Sharma, Assistant
Solicitor General of India.**

Dev Darshan Sud, J.

This petition has been filed by the petitioner claiming disability pension. The petitioner has alleged that he was enrolled on 16.8.1995 in the Indian Army and was discharged from service on 17.11.1996. He served in the Army for a period of one year and three months only. The petitioner submits that he was boarded out of Army service after the Medical Board recommended considering his medical condition. Petitioner submits that before his enrolment in the Army, he was subjected to thorough medical examination and he was found fit in all respects.

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?* Yes

He completed his basic training and was assigned to 22 Punjab Regiment, where he served as Sepoy in Poonch - Rajori (Jammu and Kashmir). Petitioner submits that it was an operational area and he developed trouble in his right ear during service. He was treated at the Army hospitals at Bareilly and Lucknow for further treatment.

His further case is that after his discharge from the Army on 16.11.1996, he returned to his village where he is still living. In the year 2000, petitioner met one Shri Sanjiv Kumar Bansal, who was also enrolled as Sepoy in the Indian Army in Punjab Regiment and had been discharged from Army on medical grounds on having incurred permanent disability. He was informed by this person that Army had not given him any disability pension, resultantly he had filed a writ petition being CWP No.317 of 1997 in the High Court, which was decided in his favour on 1.1.1998.

Petitioner has pleaded that he has suffered 40% permanent disability to his right ear which has not cured and is still subsisting and which is attributable to and aggravated by Army service. Petitioner's case is that he has lost discharge certificate and does not have any document etc. with him. He made representations to the District Sainik Welfare Officer, Nahan on 11.10.2000 and to the Punjab Regiment, Ramgarh. In response thereto, the petitioner was informed that his claim for pension has been rejected by CCDA (P), Allahabad, as the disability from which the petitioner was suffering, was

recorded as neither attributable to nor aggravated by Military service. This information was conveyed to the petitioner vide Annexure P-4 dated 21.10.2000.

In the reply filed by the respondents preliminary objections have been taken to the effect that the disease from which the petitioner was suffering, was neither attributable to nor aggravated by Army service and that disability was less than 20%. Objection regarding delay and latches was also raised by the respondents.

I have heard learned counsel for the parties and have also been taken through the pleadings of the parties. Medical certificate Annexure R-5, records that the disability of the petitioner has increased after joining the Army. It states that the petitioner was admitted in Military hospital Merrut on 25.5.1966. The opinion of the Medical Specialist states, "individual is not fit to stay in service. Recommended Category 'E' (EEE)." A perusal of the opinion of the Medical Board would show that the petitioner was suffering from the disability before he entered Army service. Against Column No.1 of Part-III, Opinion of the Medical Board, (Annexure R-5), the finding is as under:-

"1. Did the disability/ies exist before entering service? Yes. The individual states that he had slight defective hearing right ear before enrolment."

Percentage of disability has been assessed at 14%. Learned counsel appearing for the petitioner has cited number of judgments in respect of his contention

that disability was aggravated during Army service and that petitioner is entitled to the disability pension. I am unable to accept this contention. This Court in CWP No.742 of 2003, decided on 9.1.2007, has held that the medical certificate issued by the Medical Board cannot be brushed aside and the Court cannot substitute its own opinion for the expert opinion of the Medical Board. Of course, in circumstances where there are facts on record which would make the opinion doubtful, the Court can come to the conclusion that the medical certificate issued by the Board does not record the condition and the history accurately. There is nothing on the record to show that the disability of the petitioner is more than 20%. The requirement under Regulation 173 of the Pension Regulations is not only that the disability is attributable to Army service or that it was aggravated by such service, it should be more than 20%. This Regulation reads as under:-

"Primary conditions for the grant of disability pension.

173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed 20 per cent or over."

There is no contemporaneous medical record submitted by the petitioner to show that such disability is beyond 20%. There is no reason to disbelieve the medical record or to doubt the affidavit submitted on behalf of the respondents.

The respondents had moved an application CMP No.1048 of 2001 in which a prayer was made that an additional ground may be allowed to be raised by them regarding maintainability of the writ petition. The application was allowed by this Court on 2.8.2001 in the following terms:-

"CMP No.1048 of 2001

We have heard learned counsel for the parties. The application is allowed subject to just exceptions. The application stands disposed of."

Learned counsel for the respondents has urged that the ground of delay and laches be also considered. On going through the record, I find that there is no reasonable explanation as to why the petitioner should approach this Court at a belated stage in the year 2001. Having incurred the disability in the year 1966, he remained slept over the matter for a period of more than 35 long years. The only ground set out in the petition that he was informed by one Sanjiv Kumar Bansal that on account permanent disability incurred by him he is entitled to disability pension, cannot be accepted on its face value. I do not find any other explanation on the record. The delay is long, unexplained and cannot be accepted as being bonafide. There is merit in the submission of the learned Assistant Solicitor General appearing for the respondents. I, therefore, hold that the writ petition is barred by delay and laches. A number of judgments have been cited by the learned

counsel appearing for the petitioner in support of his claim. However, in view of the judgment of this Court in CWP No.742 of 2003 decided on 9.2.1007, I find it unnecessary to refer to those judgments.

Under these circumstances, this writ petition is dismissed. There shall be no order as to costs.

March 19, 2007
(ss)

(Dev Darshan Sud)
Judge